

**REMARKS**

This is in full and timely response the non-final Office Action mailed on December 14, 2006. Claims 3-4 and 21-39 are currently pending in this application, with claims 3, 4, and 21 being independent.

*No new matter has been added.*

Reexamination in light of the following remarks is respectfully requested.

**Rejection under 35 U.S.C. §102 and 35 U.S.C. §103**

Paragraph 3 of the Office Action includes a rejection of claims 1-2, 6, 8, 10, and 20 under 35 U.S.C. §102 as allegedly being anticipated by International Publication No. WO 02/25842 to Dowling et al. (Dowling).

Paragraph 7 of the Office Action includes a rejection of claims 5 and 17 under 35 U.S.C. §103 as allegedly being unpatentable over Dowling and further in view of U.S. Patent No. 5,218,466 to Brooks.

These rejections are traversed at least for the following reasons.

**Claims 1-2, 5-6, 8, 10, 17, and 20** - While not conceding the propriety of these rejections and in order to advance the prosecution of the above-identified application, claims 1-2, 5-6, 8, 10, 17, and 20 have been canceled.

Moreover, the procedures established by Title 37 of the Code of Federal Regulations expressly entitle the Applicant to an Examiner's affidavit upon request. Specifically, "when a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called

for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.” 37 C.F.R. §1.104(d) (2).

*Accordingly, Applicant hereby requests a reference or an Examiner’s affidavit to support this officially noticed position of obviousness or what is well known.*

Further, note that if this reference or Examiner’s affidavit is not provided, the assertions of what is well known **must** be withdrawn. See M.P.E.P. §2144.03.

Also, note that the *failure to provide any objective evidence to support the challenged use of Official Notice constitutes clear and reversible error. Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989).

Withdrawal of these rejections is respectfully requested.

Paragraph 6 of the Office Action includes a rejection of claims 3-4, 7, 9, 11-16, and 18-19 under 35 U.S.C. §103 as allegedly being unpatentable over Dowling.

This rejection is traversed at least for the following reasons.

**Claims 7, 9, 11-16, and 18-19** - While not conceding the propriety of these rejections and in order to advance the prosecution of the above-identified application, claims 7, 9, 11-16, and 18-19 have been canceled.

*Applicant hereby requests a reference or an Examiner’s affidavit to support this officially noticed position of obviousness or what is well known.*

Further, note that if this reference or Examiner’s affidavit is not provided, the assertions of what is well known **must** be withdrawn. See M.P.E.P. §2144.03.

Also, note that the *failure to provide any objective evidence to support the challenged use of Official Notice constitutes **clear and reversible error***. *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989).

**Claims 3-4** - If the allowance of either claim 3 or claim 4 is not forthcoming at the very least and a new grounds of rejection made, then a **new non-final Office Action** is respectfully requested for the reasons provided hereinbelow.

Claim 3 has been rewritten to place that claim into independent form. Claim 3 is drawn to a communications system comprising:

a communications lighting apparatus having a first light source unit which emits illumination light and a second light source unit which transmits information in the form of an optical signal; and

a mobile terminal device which receives the optical signal emitted by the second light source,

wherein the second light source unit has at least two light sources which intermittently emit light beams of the same wavelength, which are independent of each other.

Claim 4 has been rewritten to place that claim into independent form. Claim 4 is drawn to a communications system comprising:

a communications lighting apparatus having a first light source unit which emits illumination light and a second light source unit which transmits information in the form of an optical signal; and

a mobile terminal device which receives the optical signal emitted by the second light source,

wherein the second light source unit has at least two light sources which intermittently emit light beams of different wavelengths, which are independent of each other.

The Office Action admits that Dowling fails to disclose, teach, or suggest that the second light source unit has at least two light sources which intermittently emit light beams (Office Action at page 4).

Nevertheless, the Office Action asserts, without providing any supporting evidence, that it would have been obvious to one of ordinary skill in the art to include these techniques in the apparatus of Dowling to provide the benefit of providing multiple communication channels for increased transmission rates (Office Action at page 4).

In response to this assertion, the teachings, suggestions or incentives supporting the obviousness-type rejection must be clear and particular. Broad conclusory statements, standing alone, are not evidence. *In re Dembiczak*, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

As a rule, “assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference.” (Citations omitted). *In re Pardo and Landau*, 214 USPQ 673, 677 (CCPA 1982). The support must have existed at the time the claimed invention was made. *In re Merck & Co., Inc.*, 231 USPQ 375, 379 (Fed. Cir. 1986).

“Allegations concerning specific ‘knowledge’ of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.” (Citations omitted). *In re Pardo and Landau*, 214 USPQ 673, 677 (CCPA 1982).

However, this assertion made within the Office Action of the second light source unit having at least two light sources is merely *a personal conclusion that is unsupported by any objective evidence*.

The Office Action takes Official Notice that the second light source unit having at least two light sources which intermittently emit light beams is known in the art (Office Action at page 4).

In response, "it is impermissible, however, simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps. The references themselves must provide some teaching whereby the applicant's combination would have been obvious" (citations omitted). *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). See also *In re Dembiczak*, 50 USPQ2d 1614, 1616 (Fed. Cir. 1999) (rejection based upon hindsight is reversed).

**Applicant hereby requests a reference or an Examiner's affidavit to support this officially noticed position of obviousness or what is well known.**

Further, note that if this reference or Examiner's affidavit is not provided, the assertions of what is well known **must** be withdrawn. See M.P.E.P. §2144.03.

Also, note that the *failure to provide any objective evidence to support the challenged use of Official Notice constitutes **clear and reversible error***. *Ex parte Natale*, 11 USPQ2d 1222, 1227-1228 (Bd. Pat. App. & Int. 1989).

In addition, this assertion amounts to nothing more than an "obvious-to-try" situation. Specifically, "an 'obvious-to-try' situation exists when a general disclosure may pique the scientist's curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued." *In re Eli Lilly & Co.*, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990). Moreover, "an invention is 'obvious to try' where the prior art gives either no indication of which parameters are critical or no direction as to which of many possible choices is likely to be successful." *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843, 1845 (Fed. Cir. 1989).

Here, the cited prior art does not contain a sufficient teaching of how to obtain the desired result, or that the claimed result would be obtained if certain directions were pursued. “Obvious to try” is not the standard under §103. *In re O'Farrell*, 7 USPQ2d 1673, 1680 (Fed. Cir. 1988).

Withdrawal of these rejections and allowance of the claims is respectfully requested.

**Newly added claims**

**Claims 21-39** - Claims 22-39 are dependent upon claim 21. Claim 21 is drawn to a communications system comprising:

a communications lighting apparatus having an illumination light source adapted to emit illumination light and an information-transmitting unit adapted to emit an optical signal,

wherein said information-transmitting unit has light sources, a light beam from one of said light sources being emitted independent of a light beam from another of said light sources.

**Dowling** - Dowling arguably teaches a lighting subsystem 130 that may include a light source 132 responsive to an illumination signal 134, and a transmitter 136 and a receiver 138 (Dowling at Figure 5).

However, Dowling fails to disclose, teach, or suggest wherein the light source 132 having light sources, wherein a light beam from one of the light sources is emitted independent of a light beam from another of the light sources.

In addition, Dowling fails to disclose, teach, or suggest wherein the transmitter 136 having light sources, wherein a light beam from one of the light sources is emitted independent of a light beam from another of the light sources.

**Brooks** - Referring now to FIG. 3, **Brooks** arguably teaches a schematic diagram 300 of the components of the light apparatus 100 that includes the light sources 104 and 106 and the light detector 108 (Brooks at column 4, lines 10-13).

Nevertheless, **Brooks** fails to disclose, teach, or suggest wherein the light source 104 having light sources, wherein a light beam from one of the light sources is emitted independent of a light beam from another of the light sources.

Moreover, **Brooks** fails to disclose, teach, or suggest wherein the light source 106 having light sources, wherein a light beam from one of the light sources is emitted independent of a light beam from another of the light sources.

Allowance of the claims is respectfully requested.

### **Conclusion**

For the foregoing reasons, all the claims now pending in the present application are allowable at least for the reasons provided hereinabove and for the additional features that they recite. Thus, the present application is in condition for allowance.

Accordingly, favorable reexamination and reconsideration of the application in light of the remarks is courteously solicited.

If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753, or the undersigned attorney.

If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

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Respectfully submitted,

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